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World Wrestling Entertainment, Inc.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

MLW MEDIA LLC,

Plaintiff,

v.

WORLD WRESTLING  
ENTERTAINMENT, INC.,

Defendant.

**Case No. 5:22-cv-00179-EJD**

**DEFENDANT WORLD WRESTLING  
ENTERTAINMENT, INC.'S NOTICE OF  
MOTION AND MOTION TO DISMISS  
PLAINTIFF MLW MEDIA LLC'S  
COMPLAINT AND MEMORANDUM IN  
SUPPORT**

Hearing Date: September 29, 2022

Time: 9:00 AM

Place: Courtroom 4 or videoconference

Judge: Hon. Edward J. Davila

**NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT**

**PLEASE TAKE NOTICE** that on September 29, 2022, or as soon thereafter as this matter may be heard, either in Courtroom 4 of this Court, located at 280 South 1st Street, San Jose, California 95113, or by videoconference or teleconference (if the Court prefers), Defendant World Wrestling Entertainment, Inc. (“WWE”) will and hereby does move the Court for an order granting Defendant’s Motion to Dismiss Plaintiff MLW Media LLC’s (“MLW”) Complaint with prejudice. The grounds for dismissal are as follows:

First, WWE moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss MLW’s federal antitrust claim because MLW failed to plausibly plead (1) a facially sustainable relevant market, (2) monopoly power or anticompetitive conduct, or (3) antitrust injury. WWE further moves to dismiss MLW’s remaining state law claims pursuant to Federal Rule of Civil Procedure 12(b)(1) because the Court lacks subject matter jurisdiction over them if the federal antitrust claim is dismissed.

Second, WWE moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss all state law claims should this Court exercises jurisdiction over them. MLW’s claim for intentional interference with contractual relations is unsupported by factual allegations, and what allegations MLW pleads are entirely implausible. MLW’s claim for intentional interference with prospective economic advantage fails because MLW does not allege that WWE knew about MLW’s negotiations to sell a third party first-run programming, nor does MLW plausibly allege that WWE’s alleged single communication with the third party influenced its decision not to purchase MLW’s content. Finally, MLW’s unfair competition claim fails because (1) it is not tethered to some other viable antitrust or tort claim, and (2) MLW lacks Article III and statutory standing to assert such a claim.

Finally, WWE moves pursuant to Federal Rule of Civil Procedure 12(b)(5) to dismiss MLW’s complaint for lack of personal jurisdiction because neither party is a resident of California, no harm specific to California is alleged, and none of the alleged misconduct took place in California.

1           This Motion is based upon this Notice; the accompanying Memorandum of Points and  
2 Authorities; any reply memorandum; the pleadings and files in this action; and such other matters  
3 as may be presented at or before the hearing.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF THE ISSUES TO BE DECIDED**

1. Whether the Court should dismiss the entire complaint for failure to state a claim and lack of subject matter jurisdiction, where plaintiff fails to plausibly allege a violation of Sherman Act § 2, and this Court thus has no supplemental jurisdiction over state law claims asserted against a non-diverse defendant.

2. Whether the Court should separately dismiss state law claims for intentional interference with contractual relations, intentional interference with prospective economic advantage, and a violation of California’s Unfair Competition Law, where plaintiff failed to plausibly allege such conduct by defendant.

3. Whether the Court should dismiss the complaint for lack of personal jurisdiction, where neither party is a resident of California, no harm specific to California is alleged, and none of the alleged misconduct took place in California.

**II. INTRODUCTION**

MLW styles itself to be an “innovative startup” in the professional wrestling world with “cutting-edge storylines,” but the complaint tells a very different story. Since 2017, MLW has attempted to sell “broadcast rights” for professional wrestling content to television broadcast networks, cable networks, and streaming services.<sup>1</sup> In that time, MLW alleges that a new entrant,

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<sup>1</sup> MLW attempts to define the relevant product as “broadcast rights” for professional wrestling sold to “national networks, cable, and streaming services.” This proposed market does not remotely represent the television and streaming industries. WWE does not sell content that networks then own. WWE sells a license to air content, the copyright to which remains with WWE. The networks’ rights under the license vary contract to contract. In exchange for the license, WWE receives rights fees. Other forms of payment for a license could include a share of advertising revenue, or a right to sell advertising. MLW further conflates all customers for licenses as “networks, cable, and streaming services.” Networks include free, over-the-air broadcast networks or paid cable networks. Although their business models are not identical, both derive revenue from

1 All Elite Wrestling, exploded onto the scene and quickly captured a contract to sell broadcast rights  
 2 for its professional wrestling program, Dynamite, to WarnerMedia for \$43.8 million annually. Doc.  
 3 No. 1, Complaint (“Compl.”) ¶ 22. Further in that same time, MLW alleges that market incumbents  
 4 WWE secured contracts with NBCUniversal and Fox to sell its US broadcast rights for two of its  
 5 programs for a combined average annual value of \$470 million, and Impact Wrestling (“Impact”)  
 6 secured a contract to air on the cable channel AXS. *Id.* at ¶¶ 20, 22. But not MLW. Despite some  
 7 potential opportunities with the cable channel VICE TV (“VICE”) and streaming service Tubi,  
 8 MLW is yet to sell broadcast rights for its wrestling program. Hundreds if not thousands of other  
 9 potential buyers of broadcast rights exist, but MLW does not allege that it attempted to sell its  
 10 content to any of them. MLW could start its own streaming service and reach consumers directly—  
 11 as it acknowledges that WWE and Impact have done—but it does not allege to have tried that,  
 12 either.

13 MLW has given up competing in the ring and chosen instead to compete in the courtroom.  
 14 MLW brought claims for monopolization, intentional interference with contractual relations,  
 15 intentional interference with prospective economic advantage, and unfair competition against  
 16 WWE in a vain hope to shift blame for its failures away from itself. But MLW’s failings are its  
 17 own. Its claims are meritless and should be dismissed as a matter of law.

18 *First*, MLW fails to plausibly allege that WWE violated Section 2 of the Sherman Act.  
 19 MLW provides no facts to support its naked assertion that there is a relevant product market for the  
 20 sale of broadcasting rights for professional wrestling programs to national networks, cable, and  
 21 streaming services. Even if such a market somehow existed, MLW fails to plausibly allege that  
 22 WWE possesses monopoly power within it. To the contrary, its complaint is bereft of any facts  
 23 suggesting that WWE could possibly hold any power over the dozens, if not hundreds, of networks,  
 24

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25 advertising and provide content linearly (i.e., the viewer must watch programming when it airs).  
 26 Streaming services operate a completely different, on-demand delivery model and may generate  
 27 revenue from subscriptions or selling advertising. WWE adopts MLW’s erroneous terminology in  
 28 this brief only because it must.

1 cable, and streaming services with which WWE has no commercial relationships. Indeed, AEW's  
 2 and Impact's successful sales of broadcast rights show just the opposite. Finally, MLW's Sherman  
 3 Act claim fails for lack of antitrust injury. The antitrust laws protect competition, not competitors,  
 4 yet MLW fails to allege any plausible facts demonstrating harm to the competitive process. The  
 5 failure to plead antitrust injury is absolutely fatal to MLW's complaint and, indeed, independently  
 6 warrants dismissal.

7 ***Second***, MLW fails to plausibly allege intentional interference with contractual relations.  
 8 MLW asserts that it had a contract to sell Tubi, a streaming service owned by Fox, "broadcast  
 9 rights" for its wrestling program, and that WWE forced Tubi to terminate that contract under the  
 10 threat of pulling all WWE content from Fox. But MLW alleges no facts explaining how WWE's  
 11 communication or communications over the course of one day achieved this response from Fox.  
 12 Moreover, the notion that WWE would jeopardize hundreds of millions of dollars in rights fees and  
 13 breach its own contract with Fox in order to keep MLW off a streaming service makes no rational  
 14 sense, just as Fox's capitulation to any such threat is wholly implausible in light of its ability to  
 15 enforce its contract with WWE.

16 ***Third***, MLW fails to plausibly allege intentional interference with prospective economic  
 17 advantage. MLW asserts that it had a contract with VICE to air archival (*i.e.*, old) content and was  
 18 negotiating to sell broadcast rights for first-run (*i.e.*, new) content. MLW postulates that WWE,  
 19 through a single phone call in June 2021, forced VICE to abandon those negotiations for first-run  
 20 content months later. But MLW fails to plead that WWE even knew that MLW was negotiating to  
 21 sell VICE broadcast rights for first-run content. Moreover, MLW admits that VICE aired one  
 22 episode of first-run MLW content months after the alleged WWE phone call, demonstrating that  
 23 the conversation had zero influence on VICE. Finally, MLW fails to plead that WWE was the  
 24 proximate cause for VICE's decision to abandon negotiations, rather than some other intervening  
 25 fact, such as the first-run episode of MLW drawing a disappointing number of viewers.

26 ***Fourth***, MLW fails to allege that WWE engaged in unfair competition. Unfair competition  
 27 claims must be tethered to some other antitrust violation or tort, and MLW has alleged none.  
 28

Moreover, MLW’s unfair competition claim fails because it lacks Article III or statutory standing even if other claims survive.

For these reasons addressed more fully below, WWE respectfully requests that this Court dismiss MLW’s complaint with prejudice.

### **III. ARGUMENT AND AUTHORITIES**

To survive a Rule 12(b)(6) motion, MLW’s factual allegations must be sufficient “to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558, 570 (2007). “However, as the Supreme Court has noted precisely in the context of private antitrust litigation, ‘it is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive.’” *Feitelson v. Google Inc.*, 80 F. Supp. 3d 1019, 1025 (N.D. Cal. 2015) (quoting *Twombly*, 550 U.S. at 558-59). “As such, ‘a district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed.’” *Id.* at 1025–26 (quoting *Assoc.’d Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 528 n.17 (1983), quoted with approval in *Twombly*, 550 U.S. at 559). Thus, “[a]llegations of facts that could just as easily suggest rational, legal business behavior” are insufficient to plead an antitrust case. *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1049 (9th Cir. 2008). Indeed, allegations of wrongdoing must be “plausible in light of basic economic principles.” *William O. Gilley Enters., Inc. v. Atl. Richfield Co.*, 588 F.3d 659, 662 (9th Cir. 2009). And, “[w]hen considering plausibility, courts must also consider an ‘obvious alternative explanation[]’ for defendant’s behavior.” *Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2008)).

#### **A. MLW Fails to Plead a Plausible Claim under Section 2 of the Sherman Act**

MLW’s claim under Section 2 of the Sherman Act fails for three reasons. First, MLW fails to allege a plausible marketplace. Second, MLW fails to allege that WWE has or is likely to acquire monopoly power within the marketplace. Third, MLW fails to plead antitrust injury. Each of these deficiencies alone requires dismissal of MLW’s Sherman Act claim. Taken together, these

deficiencies reveal that MLW’s theory of antitrust liability is hopelessly flawed and must be dismissed for failure to state a claim upon which relief can be granted.

**i. MLW Fails to Allege a Plausible Relevant Product Market**

The first step with any antitrust claim is to define a relevant market so that a defendant is on notice of where exactly it is alleged to have lessened competition. Indeed, the Ninth Circuit states that the “threshold step in any antitrust case is to accurately define the relevant market.” *Fed. Trade Comm’n v. Qualcomm Inc.*, 969 F.3d 974, 992 (9th Cir. 2020); *see also Image Tech. Servs., Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1202 (9th Cir. 1997) (“The relevant market is the field in which meaningful competition is said to exist.”). Market definition is an essential predicate to the entire case, for “[w]ithout a definition of [the] market there is no way to measure [the defendant’s] ability to lessen or destroy competition.” *Ohio v. American Express Co.*, 138 S. Ct. 2274, 2285 (2018). “Accordingly, an antitrust plaintiff must plead a plausible relevant market—including ‘both a geographic market and a product market’—to state a claim.” *Reilly v. Apple Inc.*, 2022 WL 74162, \*4 (N.D. Cal. Jan. 7, 2022) (citing *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1120 (9th Cir. 2018)). “Failure to identify a relevant market is a proper ground for dismissing a Sherman Act claim.” *Tanaka v. Univ. of S. California*, 252 F.3d 1059, 1063 (9th Cir.2001); *Pistacchio v. Apple, Inc.*, No. 4:20-cv-07034-YGR, 2021 WL 949422, at \*2 (N.D. Cal. Mar. 11, 2021); *Coronavirus Reporter v. Apple, Inc.*, No. 21-CV-05567-EMC, 2021 WL 5936910, at \*7 (N.D. Cal. Nov. 30, 2021).

In order to plead a viable product market, the Ninth Circuit *requires* that it “encompass the product at issue as well as all economic substitutes for the product.” *Newcal Indus., Inc. v. Ikon Office Sol.*, 513 F.3d 1038, 1045 (9th Cir. 2008). “The principle most fundamental to product market definition is ‘cross-elasticity of demand’ for certain products or services.” *Kaplan v. Burroughs Corp.*, 611 F.2d 286, 291-92 (9th Cir. 1979). “Authorities far too numerous to cite or discuss in detail have established” that “[t]he principle most fundamental to product market definition is ‘cross-elasticity of demand.’” *Id.* “In defining the relevant market, the court must look beyond the particular commodity produced by an alleged monopolist because the relevant product market for determining monopoly power, or the threat of monopoly control, depends upon

1 the availability of alternative commodities for buyers.” *Id.* at 292 (citing *Fount-Wip, Inc. v. Reddi-*  
 2 *Wip, Inc.*, 568 F.2d 1296, 1301 (9th Cir. 1978)). “A plaintiff cannot ignore economic reality and  
 3 ‘arbitrarily choose the product market relevant to its claims’; rather, the plaintiff must ‘justify any  
 4 proposed market by defining it with reference to the rule of reasonable interchangeability and cross-  
 5 elasticity of demand.’” *Reilly*, 2022 WL 74162, at \*4 (citing *Buccaneer Energy (USA) v. Gunnison*  
 6 *Energy Corp.*, 846 F.3d 1297, 1313 (10th Cir. 2017)).

7 MLW alleges that the relevant product market is “the national market for the sale of  
 8 broadcasting rights for professional wrestling programs to networks, cable[,] and streaming  
 9 services.” Compl. ¶ 17. However, MLW provides scant facts supporting this proposed market.  
 10 MLW includes no allegations about the structure of the television and streaming industries; no  
 11 allegations about how or why networks, cable, or streaming services purchase broadcast rights; no  
 12 allegations about the factors that networks, cable, or streaming services consider when purchasing  
 13 those rights; no allegations about various potential fee structures used in the industry; no allegations  
 14 even about the production of professional wrestling programming; and no allegations that foreign,  
 15 regional, or local channels or streaming services could not purchase professional wrestling  
 16 broadcast rights.

17 Importantly, MLW fails to allege that customers – here, alleged to be national networks,  
 18 cable, and streaming services – do not have reasonably interchangeable alternatives to broadcast  
 19 rights for scripted professional wrestling programming. Obviously, the vast majority of content  
 20 aired by national networks, cable, and streaming services is not professional wrestling. MLW  
 21 cannot explain why other content (such as *The Walking Dead*, *Survivor*, *90 Day Fiancé*, UFC, or  
 22 NASCAR) is not a reasonably interchangeable substitute for scripted professional wrestling. To  
 23 say that no reasonably interchangeable alternatives to professional wrestling broadcast rights exist  
 24 is akin to saying no reasonably interchangeable alternatives to broadcast rights for zombie shows  
 25 exist. It is, of course, absurd, and purchasers of broadcast rights for zombie shows would consider  
 26 other programming as alternatives. “In short, a plausible market requires alleged facts explaining  
 27 why the products *included* in the market *are substitutes* for one another as well as alleged facts  
 28 explaining why seemingly similar products *excluded* from the market *are not substitutes* for those

1 in the market.” *Reilly*, 2022 WL 74162, \*6 (emphasis in original). MLW’s complaint falls  
 2 woefully short of alleging these critical facts and is subject to dismissal for this reason alone. *See*,  
 3 *e.g.*, *Colonial Med. Group, Inc. v. Catholic Healthcare West*, No. C-09-2192 MMC, 2010 WL  
 4 2108123, at \*3 (When a plaintiff “fails to define its proposed relevant market with reference to the  
 5 rule of reasonable interchangeability and cross-elasticity of demand, or alleges a proposed relevant  
 6 market that clearly does not encompass all interchangeable substitute products even when all  
 7 factual inferences are granted in plaintiff’s favor, the relevant market is legally insufficient and a  
 8 motion to dismiss may be granted.”); *see also Reilly*, 2022 WL 74162, \*6 (dismissing complaint  
 9 that failed to discuss cross-elasticity of demand).

10 **ii. MLW Fails to Plead that WWE Possesses Monopoly Power or**  
 11 **Engaged in Anticompetitive Conduct in the Proposed Relevant**  
 12 **Product Market**

13 Regardless of whether a plaintiff asserts a claim for monopolization or attempted  
 14 monopolization, Section 2 of the Sherman Act requires a plaintiff to plead that the defendant  
 15 possess monopoly power or that there exists a dangerous probability of the defendant achieving  
 16 monopoly power. *See Image Tech. Servs.*, 125 F.3d at 1202; *Rebel Oil Co., Inc. v. Atlantic*  
 17 *Richfield, Co.*, 51 F.3d 1421, 1434 (9th Cir.). And even if monopoly power is properly pled, mere  
 18 “possession of monopoly power will not be found unlawful unless it is accompanied by an element  
 19 of anticompetitive conduct.” *Verizon Commc’ns Inc. v. Law offices of Curtis V. Trinko, LLP*, 540  
 20 U.S. 398, 407 (2004) (emphasis in original). MLW fails to plead either monopoly power or actual  
 21 anticompetitive conduct.

22 **1. MLW Does Not Plead Monopoly Power**

23 “Monopoly power is the power to control prices or exclude competition.” *Image Tech.*  
 24 *Servs., Inc.*, 125 F.3d at 1202. “Market power<sup>2</sup> can be proven by either direct or circumstantial  
 25

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26 <sup>2</sup> The terms “market power” and “monopoly power” are interchangeable. *See Cost Mgmt. Servs.*,  
 27 *Inc. v. Washington Nat. Gas Co.*, 99 F.3d 937, 950 n. 15 (9th Cir.1996); *Image Tech. Servs., Inc.*,  
 28 125 F.3d at 1202.

evidence.” *Id.* To demonstrate monopoly power by circumstantial evidence, a plaintiff must: “(1) define the relevant market, (2) show that the defendant owns a dominant share of that market, and (3) show that there are significant barriers to entry and show that existing competitors lack the capacity to increase their output in the short run.” *Id.*

As an initial matter, because MLW fails to plead a relevant product market, the Court need not resolve whether MLW has pled monopoly power. *See Kinderstart.com LLC v. Google, Inc.*, No. C 06-2057 JF (RS), 2007 WL 831806, at \*10 (N.D. Cal. Mar. 16, 2007). But even if the Court were to accept MLW’s relevant market as adequately pled, MLW fails to allege sufficient direct or circumstantial evidence that WWE possesses monopoly power within it.

To plausibly allege direct evidence of monopoly power, MLW must allege specific facts showing that WWE has the power to force networks, cable, and streaming services (which include some of the world’s largest companies) to exclude MLW from their platforms. MLW ignores that there are thousands of content providers (of which the WWE is but one) that sell programming to networks, cable, and streaming services. MLW further ignores that, in these countless transactions, the *purchasers* of content wield predominately all the power, not the content providers, and MLW pleads no facts to suggest otherwise. Indeed, claiming that WWE – one of the thousands of content providers – has the ability to control what networks, cable, and streaming services purchase is as improbable as the author of one book controlling what Amazon, Barnes & Noble, and local used bookshops purchase and re-sell. Obviously, neither WWE nor any other content provider wields such power over networks, cable, and streaming services. Indeed, quite the opposite is true. Given the obvious realities of which entities wield power, it is not surprising that MLW fails to plead *any* facts to support WWE’s alleged monopoly power over networks, cable, and streaming services. Nor is it surprising that the complaint contains no specific factual allegation that WWE reduced its output of professional wrestling programming or raised market prices beyond a competitive level.

Without any direct evidence of monopoly power, MLW relies entirely on allegations of circumstantial evidence of WWE’s monopoly power. However, even the circumstantial evidence provided quickly demonstrates WWE’s *lack* of monopoly power. MLW alleges nothing more than an unexplained allegation that WWE controls 85% of the “market” and concludes, without specific

1 examples, that significant barriers to enter this “market” exist. Compl. at ¶¶ 25-27. These  
 2 allegations, however, are nothing more than the conclusory allegations eschewed by the Supreme  
 3 Court.

4 *First*, MLW does not explain how WWE has 85% market share in the proposed market.  
 5 MLW concludes that WWE possesses such market share based on some unexplained amalgamation  
 6 of uncited 2020 viewership data for three wrestling promotions on cable and network television.  
 7 As a starting point, the complaint discusses four competitors but includes data for only three of the  
 8 four. MLW provides no explanation as to why 3/4 of the data is the relevant barometer. Further,  
 9 this unexplained and selective use of data belies the fact that there are more than four wrestling  
 10 promotions in the market. Putting that initial flaw aside, MLW fails to take the crucial next step  
 11 and explain how 2020 *viewership data* for just network and cable programming gives WWE the  
 12 power to deprive networks, cable, and streaming services the choice of whether to purchase MLW  
 13 programming. Still worse, even if such data were potentially relevant to the purchasing decisions  
 14 of broadcast and cable networks, MLW fails to explain how *television* ratings connect in any way  
 15 to streaming services.

16 Indeed, it is an absurd proposition that WWE, with its viewership for three weekly wrestling  
 17 programs on two specific networks, can *force* dozens (if not hundreds) of networks, cable, and  
 18 streaming services with which it has no relationship not to purchase other professional wrestling  
 19 content. This is not “plausible in light of basic economic principles.” *Atl. Richfield Co.*, 588 F.3d  
 20 at 662. The Ninth Circuit is clear that high market share alone does not demonstrate monopoly  
 21 power when defendants cannot “control prices or exclude competitors.”<sup>3</sup> *See W. Parcel Exp. v.*  
 22 *UPS*, 190 F.3d 974, 977 (9th Cir. 1999). MLW alleges that WWE depends on its “media rights  
 23 agreements with media distribution channels such as NBCUniversal and Fox” for “almost 90%” of  
 24 its revenue. Compl. ¶ 18. Basic economic principles thus dictate that the content purchasers—not  
 25

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26 <sup>3</sup> MLW, of course, asserts (however implausibly) that WWE interfered with two distributors;  
 27 however, as explained *infra*, MLW fails to allege *exclusion* from even a significant number of  
 28 networks, cable, or streaming services, nor that WWE excluded AEW or Impact in any way.

1 WWE—predominately hold the power. If media rights distribution channels such as  
 2 NBCUniversal or Fox refused to purchase WWE’s broadcast rights, assuming plaintiff’s own  
 3 allegations are true, WWE would lose almost 90% of its annual revenue. And even if WWE were  
 4 the only active wrestling promotion selling broadcast rights, nothing in the complaint suggests that  
 5 these purchasers could not sponsor a new promotion and create its own alternative. *See United*  
 6 *States v. Archer-Daniels-Midland Co.*, 781 F. Supp. 1400, 1416 (S.D. Iowa 1991) (“The existence  
 7 of large, powerful buyers of a product mitigates against the ability of sellers to raise prices.”); *see*  
 8 *also* Dep’t of Justice and Fed. Trade Comm’n Horizontal Merger Guidelines (Aug. 19, 2010) at §  
 9 8 (when evaluating mergers, “[t]he Agencies consider the possibility that powerful buyers may  
 10 constrain the ability of the [ ] parties to raise prices. This can occur, for example, if powerful buyers  
 11 have the ability and incentive to . . . sponsor entry . . .”).

12 **Second**, MLW does not plausibly allege that barriers to entry exist. “Entry barriers are  
 13 *additional* long-run costs that were not incurred by incumbent firms but must be incurred by new  
 14 entrants, or factors in the market that deter entry while permitting incumbent firms to earn  
 15 monopoly returns.” *Rebel Oil Co.*, 51 F.3d at 1439 (emphasis added). MLW pleads (without  
 16 factual support) that barriers to entry include “production costs for professional wrestling shows;  
 17 exclusive contracts controlling wrestling talent; and the importance of brand recognition to attract  
 18 the talent necessary to produce content and entice potential new business partners to enter into  
 19 distribution deals.” Compl. ¶ 26. “These references are a start, but they are not enough.” *Optronic*  
 20 *Techs., Inc. v. Ningbo Sunny Elec. Co.*, No. 5:16-CV-06370-EJD, 2017 WL 4310767, at \*9 (N.D.  
 21 Cal. Sept. 28, 2017). “Missing are any supporting facts taking the allegations from possible to  
 22 plausible.” *Id.* MLW must, at minimum, allege *how much* it costs to produce professional wrestling  
 23 programming, *how* exclusive contracts (which MLW admits to using) reduce the talent pool, and  
 24 *what* factors are relevant to attract business partners and talent. “Without a better description of  
 25 the purported entry barriers, the allegations are too conclusory to be entitled to an assumption of  
 26 truth.” *Id.*

27 Even if MLW pled sufficient facts to support these allegations, they still would not  
 28 constitute barriers to entry in the antitrust sense. “The mere fact that entry [would require] a large

absolute expenditure of funds does not constitute a ‘barrier to entry;’ a new entrant is disadvantaged only to the extent that he must pay more to attract those funds than would an established firm.” *W. Parcel Exp. v. United Parcel Serv. of Am., Inc.*, 65 F. Supp. 2d 1052, 1062 (N.D. Cal. 1998) (quoting *Los Angeles Land Co. v. Brunswick Corp.*, 6 F.3d 1422, 1428 (9th Cir. 1993)). Yet the costs MLW purports to face are costs that WWE, AEW, and Impact also face; MLW does not allege that it must pay more. At most, MLW pleads that it is expensive to compete. But the Ninth Circuit has rejected the premise that “competition is itself a structural barrier to entry.” *United States v. Syufy Enters.*, 903 F.2d 659, 667 (9th Cir. 1990).

AEW’s success further undercuts MLW’s unsupported assertion that substantial barriers to entry exist. The complaint alleges that WWE’s popularity has “declined” over the last five years. Compl. ¶¶ 3-4. It goes on to say that, during the same period, AEW entered the proposed market and successfully sold broadcast rights to WarnerMedia. Subsequently, AEW managed to capture an average 2020 rating of 0.344 compared to WWE Raw’s 0.5075 in the key 18-to-49 demographic. *Id.* at ¶ 23. This successful entry and expansion refutes the existence of substantial barriers to entry. *See Tops Mkts. v. Quality Mkts.*, 142 F.3d 90, 99 (2d Cir. 1998) (finding no monopoly power given successful entry of competitor); *Syufy*, 903 F.2d at 665-67 (concluding that entry is easy because entrants reduced incumbent’s market share from 100 to 75 percent in four years).

**Third**, MLW fails to allege that WWE’s competitors, including AEW and Impact, could not increase their output.<sup>4</sup> Nor does MLW allege that a network, cable, or streaming service could not develop or purchase its own professional wrestling promotion if it felt that insufficient output exists or that it required an alternative to WWE. MLW cannot plead this because, with adequate funding and acumen, any content creator could create and distribute professional wrestling content. This pleading failure *alone* is fatal to MLW’s allegation of monopoly power. *Church & Dwight Co. v. Mayer Labs., Inc.*, 868 F. Supp. 2d 876, 899-900 (N.D. Cal. 2012) (finding no market power

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<sup>4</sup> This has in fact occurred. AEW began airing an additional, one-hour program, Rampage, on TNT on Friday nights before the complaint was filed. AEW also recently purchased another promotion, Ring of Honor, from Sinclair Broadcast Group, to operate as a secondary business.

1 despite 75 percent share and barriers to entry where no showing that “rivals lack the capacity to  
2 expand output”).

### 3 **2. MLW Does Not Plead Anticompetitive Conduct**

4 While WWE has no monopoly power and is unlikely to obtain monopoly power for the  
5 reasons explained above, even if monopoly power were properly pled, MLW must also plead an  
6 “element of anticompetitive *conduct*.” *Trinko, LLP*, 540 U.S. at 407; *see also Aerotec Intern., Inc.*  
7 *v. Honeywell Intern., Inc.*, 4 F. Supp. 3d 1123, 1136-37 (D. Ariz. 2014). MLW purports to allege  
8 that WWE excluded it from participating in the “market” for professional wrestling broadcasting  
9 rights sold to national networks, cable, and streaming services. But MLW does not allege that this  
10 exclusion constituted substantial foreclosure from that market.

11 It is not enough for MLW to allege that WWE excluded it from *some* of the relevant market;  
12 MLW must plead that WWE *substantially foreclosed* MLW from the market by excluding it from  
13 *at least* 30% or more of those outlets. *Rebel Oil*, 51 F.3d at 1438. MLW does not even attempt to  
14 plead substantial foreclosure: it offers not even an unfounded guess as to how much of the market  
15 is foreclosed by WWE. Nor could it. MLW does not allege that WWE in any way prevented it  
16 from selling programming to Disney networks (including ABC), Paramount networks (including  
17 CBS, MTV, and Nickelodeon), WarnerMedia networks (including TNT and TBS), Discovery  
18 networks (including Discovery and TLC), AMC Networks, Netflix, Amazon, Apple TV, PlutoTV,  
19 Roku, Pay-Per-View, or the hundreds (if not thousands) of other networks, cable, and streaming  
20 services. Nor does MLW allege that WWE prevented it from launching its own over-the-top  
21 streaming service, as both WWE and Impact have done. MLW is complaining about the shadows  
22 cast by the boughs of a lone tree, while it stands in an otherwise open and extending field.

23 The complaint in fact establishes that WWE cannot plausibly foreclose the purported  
24 market. Clearly, AEW and Impact sell their programming to WarnerMedia and AXS, respectively.  
25 Compl. ¶ 20. And MLW alleges that it distributes through YouTube and discussed distribution  
26 agreements of some kind with “potential partners” other than Tubi, none of which WWE is alleged  
27 to have any relationship. *Id.* at ¶ 49. MLW cannot blame WWE if those partners do not purchase  
28

1 MLW broadcasting rights. Without plausible factual allegations of substantial foreclosure, MLW  
2 fails to plead facts to demonstrate that WWE exercises or is likely to exercise monopoly power.

### 3 **iii. MLW Fails to Plead Antitrust Injury**

#### 4 ***1. The Sherman Act Protects Competition, Not Competitors***

5 It is axiomatic that the antitrust laws “were enacted for the protection of *competition*,  
6 not *competitors*.” *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977). Indeed,  
7 “[t]he law directs itself not against conduct which is competitive, even severely so, but against  
8 conduct which unfairly tends to destroy competition itself.” *Spectrum Sports, Inc. v. McQuillan*,  
9 506 U.S. 447, 458 (1993). Thus, a “plaintiff . . . must allege and prove harm, not just to a single  
10 competitor, but to the competitive process, *i.e.*, to competition itself.” *NYNEX Corp. v. Discon,*  
11 *Inc.*, 525 U.S. 128, 135 (1998).

12 With this in mind, “antitrust injury[] is an element of all antitrust suits brought by private  
13 parties seeking damages...” *Rebel Oil*, 51 F.3d at 1433. Antitrust injury requires “(1) unlawful  
14 conduct, (2) causing an injury to the plaintiff, (3) that flows from that which makes the conduct  
15 unlawful, and (4) that is of the type the antitrust laws were intended to prevent.” *Am. Ad Mgmt.,*  
16 *Inc. v. Gen. Tel. Co.*, 190 F.3d 1051, 1055 (9th Cir. 1999).

17 As discussed above, MLW does not plausibly allege a proper market or that WWE possess  
18 monopoly power. But even if it had, its antitrust claim still fails because it has not alleged that  
19 WWE damaged the competitive process in any way. Stripped of unsupported conclusions and  
20 antitrust buzzwords, MLW’s allegations in fact suggest robust competition within its proposed  
21 market.

#### 22 ***2. MLW’s Conclusory Allegations of Harm to Competition are*** 23 ***Contradictory and Insufficient***

24 MLW’s catch-all paragraph purporting to allege monopolization is conclusory and  
25 contradictory. MLW states that WWE (i) sought to poach MLW wrestlers under exclusive contract;  
26 (ii) aired footage of a single MLW wrestler without MLW’s consent; (iii) attempted to induce a  
27 MLW wrestler to breach their contract with MLW; (iv) and refused to hire wrestlers that previously  
28 worked for MLW. Compl. ¶ 33. But MLW does not plead who any of these wrestlers were, the

1 terms of the supposedly exclusive contract, whether WWE had a legal right to air this footage, or  
 2 which MLW talent WWE refused to hire. Still worse, it does not explain the contradictory  
 3 allegations that WWE, on one hand, “poaches” (*i.e.*, competes to hire) MLW talent but, on the other  
 4 hand, refuses to hire MLW talent.

5 Most relevant to an antitrust injury analysis, MLW does not explain how these alleged  
 6 wrongs injured competition in the proposed marketplace and not just MLW. The Ninth Circuit is  
 7 clear that an antitrust injury must occur “in the market where competition is being restrained.” *Am.*  
 8 *Ad Mgmt.*, 190 F.3d at 1057. To state a claim, the alleged harm must be “attributable to an  
 9 anticompetitive aspect of the practice under scrutiny,” harm that could have occurred under the  
 10 normal circumstances of free competition does not suffice. *In re NFL's Sunday Ticket Antitrust*  
 11 *Litig.*, 933 F.3d 1136, 1150 (9th Cir. 2019) (citing *Atl. Richfield Co. v. USA Petroleum Co.*, 495  
 12 U.S. 328, 334 (1990)). MLW’s allegations of harm are untethered to any harm to competition.  
 13 MLW does not, and cannot, allege that it was unable to book a sufficient number of wrestlers in  
 14 order to promote events and film television. Indeed, MLW pleads the opposite: it produces “cutting  
 15 edge” content with “up-and-coming” talent sufficient to attract potential deals with media partners.  
 16 Thus, even if the Court found these conclusory allegations of harm to be plausible, once again,  
 17 there is no alleged harm to the competition within MLW’s defined marketplace.

### 18 **3. MLW Fails to Allege Harm to Competition**

19 MLW’s complaint is devoid of any specific factual allegation demonstrating harm to the  
 20 competitive process in its purported market. It does not contain a single factual allegation showing  
 21 that WWE has ever locked up all networks, cable, and streaming services that purchase rights to  
 22 air content from content creators. Nor does it contain any allegations of predatory pricing, reduced  
 23 output, or any other harm to the competitive process whatsoever.

24 MLW instead relies on the conclusory epithets of anticompetitive harm eschewed by the  
 25 Supreme Court. MLW recites that, but for WWE’s conduct, “consumers [*i.e.*, networks, cable, and  
 26 streaming services] would have increased access to professional wrestling entertainment at lower  
 27 prices . . . and they would have access to and enjoy a greater variety of . . . content with higher  
 28 quality.” Compl. ¶ 52. Such conclusory allegations are insufficient to plead harm to competition

1 as a plaintiff cannot “merely recite the bare legal conclusion that competition has been restrained  
 2 unreasonably” but must instead “at a minimum, sketch the outline of [the injury to competition]  
 3 with allegations of supporting factual detail.” *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192,  
 4 1198 (9th Cir. 2012) (quotation marks omitted; alteration in original); *see also Reveal Chat Holdco,*  
 5 *LLC v. Facebook, Inc.*, 471 F. Supp. 3d 981, 998 (N.D. Cal. 2020) (rejecting as “nothing more than  
 6 conclusory” allegations that plaintiffs “had their business and assets destroyed by Facebook’s  
 7 anticompetitive scheme, and are prevented from entry or reentry into the relevant markets because  
 8 of Facebook’s exclusionary conduct”); *NorthBay Healthcare Grp., Inc. v. Kaiser Found. Health*  
 9 *Plan, Inc.*, 305 F. Supp. 3d 1065, 1074 (N.D. Cal. 2018) (dismissing antitrust claims because “there  
 10 are no non-conclusory allegations that [defendant’s] actions restrained trade in the relevant market  
 11 or injured overall competition” and the allegations “lack factual enhancement and are  
 12 conclusory.”); *Spanish Broad. Sys. of Fla., Inc. v. Clear Channel Commc’ns, Inc.*, 376 F.3d 1065,  
 13 1078-79 (11th Cir. 2004) (allegations regarding harm to competition held to be conclusory where  
 14 the complaint alleged that the defendant’s conduct “caused injury to competition by limiting  
 15 alternatives available to advertisers, performers and the listening audience” and “will continue to  
 16 affect prices for advertisements, the quality of programming, and the prices for advertisers’  
 17 products”).

18 MLW alleges no specific harms to competition because it cannot do so in good faith.  
 19 Indeed, the complaint depicts a market with multiple wrestling promotions competing to sell  
 20 broadcasting rights. MLW alleges that four competitors are in the market, and each has secured  
 21 separate and distinct distribution and revenue sources. Compl. ¶ 17. Specifically, MLW distributes  
 22 its content and secures revenue from YouTube (*id.* at ¶ 50); WWE distributes content and earns  
 23 revenue from Fox and NBCUniversal (*id.* at ¶ 20); AEW distributes content and earns revenue from  
 24 WarnerMedia (*id.* at ¶ 20); and Impact distributes content and earns revenue from AXS TV, a  
 25 Twitch channel, and its own subscription-based streaming service, Impact Plus (*id.* at ¶ 20).

26 MLW alleges that “professional wrestling companies need fair, competitive access to media  
 27 rights partners” (Compl. ¶ 51), but it provides no facts plausibly suggesting that it (or any of the  
 28 four market participants) cannot compete to sell broadcast rights to any of the remaining hundreds

1 of networks, cable, and streaming services in MLW’s proposed market. Even if WWE interfered  
 2 with MLW’s VICE and Tubi deals (which is alleged but denied), and even if WWE had exclusive  
 3 control over all channels and streaming services affiliated with NBCUniversal, Fox, A&E, and  
 4 VICE (which is not alleged), WWE defending its own, hard-earned distribution relationships would  
 5 not violate the Sherman Act when there are so many other media partners within the proposed  
 6 marketplace. *See Feitelson*, 80 F. Supp. 3d at 1030 (noting “well-recognized economic benefits to  
 7 exclusive dealing arrangements”); *CDC Techs. v. IDEXX Labs.*, 186 F.3d 74, 80-81 (2d Cir. 1999)  
 8 (upholding exclusive dealing arrangements by firm with 80 percent market share); *Tampa Elec.*  
 9 *Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961) (exclusive dealing arrangement does not  
 10 violate antitrust laws unless its probable effect is to “foreclose competition in a substantial share of  
 11 the line of commerce affected”). The defense of one’s own distribution channels is exactly the  
 12 “competition” that the antitrust laws are designed to protect.

13 Based on MLW’s allegations alone, the proposed market is highly competitive and  
 14 unharmed. All four market participants compete to sell broadcasting rights to the hundreds of  
 15 available networks, cable, and streaming services. Those same networks, cable, and streaming  
 16 services are not alleged to have actually paid higher prices or to have actually been denied the  
 17 ability to purchase professional wrestling broadcasting rights because of WWE’s purported  
 18 conduct. MLW’s complaint is thus devoid of any allegation that WWE’s conduct harmed this  
 19 market. Without allegations of harm to competition, there is no antitrust injury, and MLW’s  
 20 Sherman Act claim is improperly plead and must be dismissed. *Somers v. Apple*, 729 F.3d 953,  
 21 96-64 (9th Cir. 2013) (affirming the dismissal of Sherman Act Section 2 claims for lack of antitrust  
 22 injury); *McGlinchy.*, 845 F.2d at 813 (allowing Rule 12(c) motion to dismiss for failure to plead  
 23 antitrust injury).

#### 24 **B. MLW Fails to Plead Cognizable State Law Claims**

25 Counts I, II, and IV assert California state law claims for intentional interference with  
 26 contractual relations, intentional interference with prospective economic advantage, and unfair  
 27 competition. The Court should dismiss the state claims for lack of subject matter jurisdiction upon  
 28 dismissing the federal monopolization claim without further inquiry into the pleadings. The Court

1 would lack supplemental jurisdiction, and it would further lack diversity jurisdiction because the  
 2 parties are both Delaware corporations. Nonetheless, each of these claims also fails as a matter of  
 3 law and should be dismissed.

4 **i. Count I for Intentional Interference with Contractual Relations Fails**  
 5 **to State a Claim**

6 To state a claim for intentional interference with contractual relations, MLW must allege  
 7 “(1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant’s  
 8 knowledge of that contract; (3) the defendant’s intentional acts designed to induce a breach or  
 9 disruption of the contractual relationship; (4) actual breach or disruption of the contractual  
 10 relationship; and (5) resulting damage.” *Ixchel Pharma, LLC v. Biogen, Inc.*, 9 Cal.5th 1130, 1141  
 11 (2020) (citation omitted). This claim trips at the starting line because MLW fails to plausibly allege  
 12 any intentional acts by WWE designed to interfere with the Tubi contract.

13 **First**, MLW’s allegations surrounding the Tubi contract are too bereft of factual detail to  
 14 plead intentional interference. At the start of the complaint, MLW states that a WWE executive,  
 15 Stephanie McMahon, had a single communication with an unnamed Tubi executive in which she  
 16 “threatened” to pull all WWE content from Fox and (presumably) breach the WWE/Fox contract  
 17 unless Tubi terminated its own contract with MLW. Compl. ¶ 8. Later, MLW claims that the  
 18 alleged communication was an August 9, 2021 discussion, and that Ms. McMahon merely  
 19 “pressured the Tubi executive to deny MLW a time slot that would compete head-to-head with  
 20 WWE’s NXT programs on Tuesday night.” *Id.* at ¶ 45. MLW then claims that Ms. McMahon, at  
 21 some unspecified date or time, somehow “ultimately pressured the Tubi executive and other senior  
 22 executives at Fox to terminate the agreement in its entirety.” *Id.* The reference to discussions not  
 23 just with the unnamed Tubi executive, but with “other senior executives at Fox” as well, suggests  
 24 multiple communications, not a single discussion. MLW fails to allege (i) who at Tubi and Fox  
 25 Ms. McMahon supposedly pressured; (ii) what Ms. McMahon supposedly said; or (iii) when Ms.  
 26 McMahon supposedly had these additional communications with the Tubi executive and other  
 27 senior executives at Fox. Moreover, MLW pleads that it “received a letter purporting to terminate”  
 28 its License Agreement with Tubi. Compl. ¶ 45. MLW fails, however, to plead the contents of that

letter, the grounds for termination, whether termination was unilateral or by mutual consent, or whether Tubi paid MLW in connection with the termination. MLW's failure to plead these missing facts alone warrants dismissal of Count I. *See Watershed Asset Mgmt., L.L.C. v. Watershed Capital, LLC*, No. C 13-03852 WHA, 2014 WL 785847, at \*3 (N.D. Cal. Feb. 25, 2014) (dismissing claims lacking "factual allegations to support an inference" of interference).

**Second**, and more fatal to MLW's claim, these allegations defy all economic reality and are not remotely plausible. According to MLW, WWE depends highly on its broadcast rights deals with NBCUniversal and Fox for hundreds of millions of dollars annually, and "the combined average value of WWE's US TV rights for its programs WWE RAW and WWE Smackdown alone is \$470 million". Compl. ¶¶ 18, 22. MLW implausibly asks this Court to accept that WWE, a public company, would terminate its contract with Fox, forgoing substantial revenues and risking breach of contract litigation with Fox just to keep MLW off Tubi. Even more ridiculously, MLW asks this Court to accept that Fox would submit to such a threat rather than utilize the full panoply of rights at its disposal under the WWE/Fox contract. As noted above, courts must reject allegations that make "no economic sense." MLW fails to plead any facts to move these claims from the realm of absurd to the realm of possible, much less from the realm of possible to that of plausible.

**ii. Count II for Intentional Interference with Prospective Economic Advantage Fails to State A Claim**

To state a claim for intentional interference with prospective economic advantage, MLW must allege "(1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action." *Roy Allan Slurry Seal, Inc. v. Amer. Asphalt South*, 2 Cal.5th 505, 512 (2017). Further, an act constitutes tortious interference only if it is independently wrongful. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1153 (2003). MLW's Count II fails for numerous reasons.

1       **First**, MLW fails to allege facts showing that WWE even knew of VICE’s negotiations to  
 2 purchase broadcast rights for first-run MLW content. MLW claims that a WWE employee  
 3 “warned” a senior VICE executive in June 2021 that WWE’s “owner” (in reality, its Chairman and  
 4 CEO) was “pissed” that VICE was airing *archival* MLW content and wanted VICE to stop doing  
 5 so. Compl. at ¶¶ 6, 35, 62. But MLW fails to plead that this call touched on any negotiations for  
 6 *new*, first-run MLW content or that MLW or VICE ever disclosed those negotiations publicly or to  
 7 WWE prior to the June 2021 call. Thus, MLW pled no facts to establish that WWE ever knew that  
 8 MLW was attempting to sell broadcast rights for first-run programming at the time of the supposed  
 9 “interference.”

10       **Second**, MLW fails to plausibly allege any actual disruption in its negotiations with VICE.  
 11 MLW’s sole allegation involving WWE is the June 2021 phone call, but MLW fatally admits that  
 12 “**VICE subsequently aired one MLW program in the fall of 2021.**” Compl. ¶ 64 (emphasis added).  
 13 Thus, negotiations clearly continued for months after the June 2021 call, and MLW pleads no facts  
 14 sufficient to suggest that WWE impacted MLW’s negotiations in the slightest. *See Silicon Knights,*  
 15 *Inc. v. Crystal Dynamics, Inc.*, 983 F. Supp. 1303, 1311-12 (N.D. Cal. 1997) (granting dismissal  
 16 because “the complaint fails to assert facts sufficient to support a claim for intentional interference  
 17 with prospective economic advantage with Activision since there is no factual allegation in the  
 18 complaint that Silicon Knights’ relationship with Activision was actually disrupted”).

19       **Third**, MLW has not plausibly alleged that WWE is the proximate cause for VICE  
 20 terminating any negotiations to purchase broadcast rights for new MLW content. As noted above,  
 21 VICE aired a single episode of first-run MLW content in the fall of 2021. MLW pleads no facts to  
 22 exclude the strong likelihood that some other intervening events after the June 2021 call caused  
 23 VICE to abandon the negotiations. For example, MLW does not address news reports that the one  
 24 episode of first-run MLW content drew only a disappointing 40,000 viewers.<sup>5</sup> Instead, MLW asks  
 25

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26       <sup>5</sup> See Ex. 1 (MLW’s October 7, 2021 program was a “disappointment” with only 40,000 viewers).  
 27 The Court can take judicial notice of online news articles “for their existence and content.”  
 28 *2Die4Kourt v. Hillair Cap. Mgmt., LLC*, No. SACV 16-01304 JVS (DFMx), 2016 WL 4487895,

the Court to accept as plausible (i) that a VICE executive received a phone call from WWE in June 2021 demanding VICE not air archival MLW content, (ii) that VICE nonetheless continued to air that content, (iii) that VICE decided to air *new* MLW content months after the WWE call, and (iv) that VICE only then felt so threatened by WWE that it abandoned negotiations with MLW. Such a proposition defies all logic.

**Finally**, the alleged conduct is not “wrongful by some legal measure other than the fact of interference itself.” *Korea Supply*, 29 Cal.4th at 1153. The only independently wrongful conduct asserted in the complaint is WWE’s supposed violation of Section 2 of the Sherman Act and Cal. Bus. & Prof. Code § 17200 *et seq.* Because these claims should be dismissed for the reasons described in Sections III.A and III.B herein, MLW’s interference with prospective economic advantage claim likewise must be dismissed as a matter of law.

### **iii. Count IV for Violation of Cal. Bus. & Prof. Code § 17200 *et seq.* Fails to State A Claim**

MLW’s claim under the California Unfair Competition Law (“UCL”) fails for two independent reasons.

**First**, the UCL requires that “unfair” conduct by a competitor be “tethered” to some other violation of law. *Gregory v. Albertson’s, Inc.*, 104 Cal. App. 4th 845, 854 (2002) (“UCL ‘unfair’ claims must be tethered to specific constitutional, statutory, or regulatory provisions). Because MLW’s UCL claim is based on deficient claims of monopolization, intentional interference with contractual relations, and intentional interference with prospective economic advantage, MLW also fails to plead unfair conduct under the UCL.

**Second**, even if MLW had pled “unfair” conduct, MLW has no Article III standing or statutory standing to bring a claim under the UCL. Article III standing requires that the Plaintiff “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant,

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at \*1 n.1 (C.D. Cal. Aug. 23, 2016); *see also Unsworth v. Musk*, No. 19-mc-80224-JSC, 2019 WL 5550060, at \*4 (N.D. Cal. Oct. 28, 2019) (“judicial notice is proper because the existence of the publicly-available articles . . . cannot reasonably be questioned”).

1 and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578  
 2 U.S. 330, 338 (2016). The UCL only provides for injunctive relief, and thus to possess Article III  
 3 standing an injunction must provide MLW redress. *Gregory*, 104 Cal. App. 4th at 851. An  
 4 injunction is appropriate if a plaintiff “has suffered or is threatened with a concrete and  
 5 particularized legal harm coupled with ‘a sufficient likelihood that [it] will again be wronged in a  
 6 similar way.’” *Bates v. United Parcel Service, Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (citation and  
 7 internal quotation marks omitted). The risk of further injury, moreover, must be “real and  
 8 immediate.” *Id.* “Past exposure to illegal conduct does not in itself show a present case or  
 9 controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse  
 10 effects.” *O’Shea v. Littleton*, 414 U.S. 488, 495–96 (1974). MLW pleads no facts suggesting that  
 11 it is in real and immediate danger from further conduct by WWE. Thus, there is no ongoing or  
 12 repeated conduct to enjoin, and the UCL cannot offer MLW any redress as required under Article  
 13 III.

14 Separate from Article III standing, MLW lacks statutory standing because neither it nor  
 15 WWE is a citizen of California, and no “unfair” conduct emanated from California. “[P]laintiffs  
 16 who are not California residents must also allege facts to show that the alleged violations occurred  
 17 within California, because California’s unfair competition law does not apply extraterritorially.”  
 18 *Aghaji v. Bank of Am., N.A.*, 247 Cal. App. 4th 1110, 1119 (2016). MLW alleges that it is a  
 19 Delaware corporation headquartered in New York, and WWE is a Delaware corporation  
 20 headquartered in Connecticut. Compl. ¶¶ 13-14. MLW and the purported unfair conduct have only  
 21 one alleged connection to California: MLW states that a WWE executive located in Connecticut  
 22 spoke over the telephone to an unnamed Tubi executive in California, and that Tubi terminated its  
 23 contract with MLW sometime after the conversation. *Id.* at ¶ 45. To subject WWE to the UCL  
 24 based on the allegation’s flimsy connection to California would be “arbitrary and unfair and  
 25 transgress due process limitations.” *Norwest Mortg., Inc. v. Superior Ct.*, 72 Cal. App. 4th 214,  
 26 227 (1999) (UCL inapplicable against defendant incorporated in California because its  
 27 “headquarters and principal place of business, the place [plaintiffs] were injured, and the place the  
 28 injury-producing conduct occurred are outside California . . .”). Any conduct by WWE

1 overwhelmingly emanated from Connecticut and was felt in New York, and consequently it cannot  
2 support a UCL claim.

3 **C. WWE Respectfully Preserves the Issue of this Court's Personal Jurisdiction**  
4 **over WWE**

5 WWE recognizes that Ninth Circuit precedent, binding on this Court, interprets the Clayton  
6 Act, 15 U.S.C. § 22, to allow a plaintiff to file an antitrust suit against a domestic corporation in  
7 any federal court. *See Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174 (9th Cir.  
8 2004). However, recent Supreme Court decisions draw into question the power of a federal statute  
9 to confer general jurisdiction over a corporation not incorporated in the forum state absent sufficient  
10 conduct occurring in that state. *See BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Bristol-Myers*  
11 *Squibb v. Superior Court*, 37 S. Ct. 1773, 1780 (2017). Here, as discussed above, neither party is  
12 a resident of California, no harm specific to California is alleged, and none of the alleged  
13 misconduct took place in California. As such, WWE believes that the Ninth Circuit would  
14 reconsider its holding in *Action Embroidery* and rule that this Court lacks personal jurisdiction.  
15 WWE respectfully preserves that issue.

16 **IV. CONCLUSION**

17 WHEREFORE, for each of the reasons explained above, World Wrestling Entertainment,  
18 Inc. respectfully requests that the Court dismiss MLW Media LLC's complaint with prejudice for  
19 failure to state a claim upon which relief can be granted and for whatever other relief the Court  
20 deems just and equitable.

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